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BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

SUSAN BITTER SMITH, CHAIRMAN  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

2015 JAN 29 P 4:30

Arizona Corporation Commission

**DOCKETED**

JAN 29 2015

DOCKETED BY

IN THE MATTER OF THE FORMAL  
COMPLAINT OF ROGER AND  
DARLENE CHANTEL,

DOCKET NO. E-01750A-09-0149

**ORIGINAL**

COMPLAINANTS,

v.

MOHAVE ELECTRIC COOPERATIVE,  
INCORPORATED'S COMMENTS IN  
SUPPORT OF RECOMMENDED ORDER

MOHAVE ELECTRIC  
COOPERATIVE, INCORPORATED,

RESPONDENT.

Mohave Electric Cooperative, Incorporated ("MEC") makes this filing in support of adopting Administrative Law Judge Belinda A. Martin's comprehensive recommended Order ("Order") dismissing the Complainants' formal Complaint, with prejudice. As explained by the Order, this matter arises from a disconnection of electricity at the request of Mohave County due to unsafe conditions created when the Complainants built a structure directly under MEC's distribution lines despite a Stop Work Order issued by the County. The Chantels, over the objection of MEC, stayed the Commission's proceeding in order to pursue an eight count cause of action in Mohave County Superior Court. That proceeding was eventually dismissed by summary judgment in MEC's favor. The Complainants then appealed to the Arizona Court of Appeals, where the trial court's granting of summary judgment was upheld. Subsequently, the stay in the ACC proceeding was lifted and MEC moved to dismiss the Complainants' formal Complaint because the claims had already been adjudicated and

1 were subject to the doctrine of *res judicata*.<sup>1</sup> (Copies of the judgment and memorandum  
2 decision are attached as Exhibit A and B, respectively, for the Commission's convenience).  
3 The Order details the long history of this matter and sets forth the material facts, including the  
4 following excerpt from the Court of Appeals Memorandum Decision:

5           MEC offered undisputed evidence in support of its motion for  
6 summary judgment that it disconnected the Chantels' service  
7 because the county directed MEC to do so because of safety  
8 concerns caused by the structure the Chantels had built directly  
9 beneath the electrical lines. . . . Additionally, MEC provided the  
10 Chantels with more than adequate notice of the pending shut-off . . .  
11 and MEC provided the Chantels both written and personal notice  
12 prior to de-energizing the line.

13 Finding of Fact # 120, p. 30.

14           In summary, MEC disconnected the Complainants electric service to address an unsafe  
15 condition created by the Complainants. The Claimants have had their day in three superior  
16 court proceedings to press the numerous assertions raised in their formal Complaint. The  
17 courts have determined the claims to be unsupported by law or fact. The Order correctly  
18 recognizes those judicial determinations between the same parties are *res judicata* and  
19 mandates the Complaint be dismissed with prejudice. The Complainants' Response filed  
20 January 23, 2015 provides no basis to reject the Order and MEC respectfully requests that the  
21 Commission adopt the Order without change.

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23 /       /       /

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25 <sup>1</sup> *Electrical District No. 2 v. Arizona Corp Com'n*, 155 Ariz. 252, 259, 745 P.2d 1383, 1390 (1987).

1 DATED this 29<sup>th</sup> day of January, 2015.

2 CURTIS, GOODWIN, SULLIVAN,  
3 UDALL & SCHWAB, P.L.C.

4 By:   
5 Michael A. Curtis  
6 Larry K. Udall  
7 501 East Thomas Road  
8 Phoenix, Arizona 85012-3205  
9 Attorneys for Mohave Electric  
Cooperative, Incorporated

10 PROOF AND CERTIFICATE OF MAILING

11 I hereby certify that on this 29<sup>th</sup> day of January, 2015, I caused the foregoing  
document to be served on the Arizona Corporation Commission by delivering the original and  
thirteen (13) copies of the above to:

12 Docket Control  
13 Arizona Corporation Commission  
14 1200 West Washington  
Phoenix, Arizona 85007

15 COPY of the foregoing hand-delivered  
16 this 29<sup>th</sup> day of January, 2015 to:

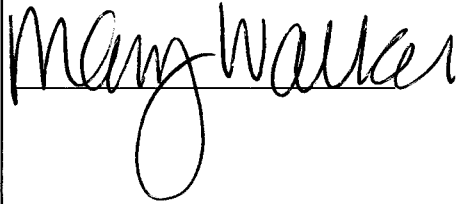
17 Belinda A. Martin, Administrative Law Judge  
18 Hearing Division  
19 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

20 Janice Alward, Esq.  
21 Legal Division  
22 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

23 Steven M. Olea, Director  
24 Utilities Division  
25 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

1 COPY of the foregoing mailed  
2 this 29<sup>th</sup> day of January, 2015 to:

3 Roger and Darlene Chantel  
4 10001 E. Highway 66  
5 Kingman, Arizona 86401

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# EXHIBIT A

FILED

BY:                     

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VIRLYNN TINNELL  
SUPERIOR COURT CLERK

1 The Law Offices of  
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11 ludall@cgsuslaw.com

12 Attorneys for Mohave Electric Cooperative

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

14 **IN AND FOR THE COUNTY OF MOHAVE**

15 DUSTIN R. CHANTEL and ELIZABETH D.  
16 CHANTEL, husband and wife,

17 Plaintiffs,

18 v.

19 MOHAVE ELECTRIC COOPERATIVE,  
20 INC., an Arizona non-profit corporation;  
21 JOHN and JANE DOES, I-X; BLACK and  
22 WHITE CORPORATIONS I-X,

23 Defendants.

24 MOHAVE ELECTRIC COOPERATIVE,  
25 INC., an Arizona non-profit corporation;

Counterclaimant,

v.

DUSTIN R. CHANTEL and ELIZABETH D.  
CHANTEL, husband and wife,

Counterdefendants.

CASE NO. CV 2009-2574

**JUDGMENT**

(Assigned to The Honorable Lee F. Jantzen)

The Court took under advisement several motions after the March 28, 2012 oral argument:



- 1) Plaintiffs' Motion to Have a Judicial Determination on All Counts;
- 2) Plaintiffs' Motion for Reconsideration to Reinstate Counts 4, 5 and 8;
- 3) Defendant's Motion for Reconsideration of Summary Judgment on Counts 1, 2 and 6;
- 4) Defendant's Motion for Striking of Plaintiffs' Motion for Reconsideration;
- 5) Defendants' Motion for Order on its Request to Admit Not Answered; and
- 6) Defendant's Motion for Sanctions for Plaintiffs' Failure to Answer Interrogatories.

The Court has reviewed the pleadings, the relevant codes, statutes and case law and the oral argument of the two parties. The Court has also considered the whole history of this file including prior rulings on motions. This case arises from Plaintiffs' construction in 2008 of a 6,200 square foot building (the "Building"), originally described by Plaintiffs as "Artwork," with insufficient clearance under Defendant Mohave Electric Cooperative ("MEC") transmission lines, resulting in the Mohave County Special Services Division ("MCSSD") directing MEC to de-energize the transmission lines over the Building. After the transmission lines over the Building were de-energized, Plaintiffs initially pursued MEC in Arizona Corporation Commission ("ACC") informal and formal complaint proceedings. The informal proceeding was resolved in MEC's favor. Before any hearing was conducted on the subsequent formal complaint Plaintiffs brought before the ACC, Plaintiffs filed this lawsuit with eight counts against MEC.

On November 9, 2011 during oral argument, Plaintiffs withdrew Count 3 (Quiet Title) and Count 4 (Ejectment).

On November 9, 2011 after oral argument, the Court granted MEC's Motion for Summary Judgment on Count 5 (Recovery of Rents), Count 7 (Intentional Infliction of Emotional Distress) and on Count 8 (Punitive Damages).

The Court has reviewed Plaintiffs' Motion for Reconsideration and the Response filed by MEC. Plaintiffs have not that raised any additional issues of fact since oral argument. Accordingly,

IT IS ORDERED denying Plaintiffs' Motion for Reconsideration on Count 5 (Recovery of

1 Rents), Count 7 (Intentional Infliction of Emotional Distress) and on Count 8 (Plaintiffs' request for  
2 punitive damages).

3 At that same hearing on November 9, 2011 the Court denied Defendant's Motion for  
4 Summary Judgment as it related to Count 1 (Breach of Contract), Count 2 (Breach of Covenant of  
5 Good Faith) and Count 6 (Negligence) and MEC's Motion for Summary Judgment on MEC's  
6 Counterclaim against Plaintiffs. This denial was a close call by the Court and done with the

7 expectation and avowal by Plaintiffs that additional discovery would be forthcoming. Since that time  
8 Plaintiffs have not provided sufficient additional discovery to address the main issues that they have  
9 raised in any of the pending causes of action. In retrospect, the Court's denial of MEC's entire  
10 motion was incorrect.

11 With regard to Count 1 (Breach of Contract), the only contract between the parties is the  
12 original contract where Plaintiffs joined MEC as members. Plaintiffs have not shown any specific  
13 terms of the contract being violated by MEC. Plaintiffs now argue that they built the Building as a  
14 "safety" concern due to the position and condition of the MEC transmission lines. However, that  
15 issue was only raised in one letter in 2006 to MEC and that letter is not sufficient to show that safety  
16 from the transmission lines was the reason for the construction of the Building. Plaintiffs never took  
17 their alleged concerns to the ACC before constructing the Building, nor have they provided any  
18 evidence that the transmission lines were an actual safety concern. Nor does any evidence exist that,  
19 even assuming legitimate safety concerns existed at the time, that those concerns would have  
20 warranted allowing Plaintiffs to construct the Building to protect them from the transmission lines.  
21 The evidence shows that MCSSD's direction to MEC to de-energize the transmission lines over the  
22 Building was based on safety concerns that included the insufficient clearance between the Building  
23 and MEC's transmission lines.

24 With regard to Count 2 (Breach of Contractual Obligation to Deal in Good Faith), having  
25 found that there has been no breach of contract, this Court finds that there is no basis to find that



1 MEC has breached any contractual obligation to deal in good faith.

2 With regard to Count 6 (Negligence), Plaintiffs have failed to show MEC's actions to be  
3 negligent in any manner. The "safety" concern recently emphasized by Plaintiffs as the reason for the  
4 construction of the Building is a recent purported concern raised by the Plaintiffs that has no merit.  
5 The only legitimate safety issues in this case have been raised by MEC since the beginning and are  
6 what led to the transmission lines to be de-energized. MEC was not negligent in de-energizing the

7 transmission lines. MEC had no choice in its course of action due to actions by the Plaintiffs and the  
8 mandate from the MCSSD. Under industry guidelines, the Building was constructed too close to the  
9 already existing transmission lines. The Plaintiffs constructed the Building without notice to the  
10 County or MEC, without permission and without addressing various legal issues. Had the Plaintiffs'  
11 conduct been otherwise, there might have been a resolution without MEC being obligated to de-  
12 energize the transmission lines. Based on the foregoing,

13 IT IS ORDERED granting MEC's Motion for Reconsideration on Counts 1, 2 and 6.

14 IT IS FURTHER ORDERED granting MEC's Motion for Summary Judgment on Counts 1  
15 (Breach of Contract), Count 2 (Breach of Contractual Obligation to Deal in Good Faith) and Count 6  
16 (Negligence).

17 IT IS FURTHER ORDERED granting MEC's Motion for Summary Judgment on MEC's  
18 Counterclaim against Plaintiffs Dustin Roger Chantel and Elizabeth D. Chantel, both jointly as  
19 husband and wife and individually, in the Motion's stated amounts for: 1) disconnect costs  
20 (\$12,135.09); rerouting costs for the distribution lines (\$23,145.47); and 3) service charges (amount  
21 requested and not objected to - \$12,601.48) – for a total amount of \$47,912.04, bearing interest at the  
22 rate of ~~ten percent~~ <sup>4.25 percent</sup> per annum on the principal from the date of entry of Judgment until satisfied.

23 As to MEC's request for attorney's fees, the Court finds that: MEC did not do anything wrong  
24 by de-energizing the transmission lines above the Building; the Plaintiffs have failed to raise a *prima*  
25 *facie* case on any of their Complaint's counts; Plaintiffs' material allegations are unsubstantiated; and

1 it would have been preferable for the safety issues to have been raised before the ACC. Based on  
2 those findings, the Plaintiffs' cooperative membership (a form of contract), the Plaintiffs' allegations  
3 in Counts 1 and 2 (alleging a contract and breach thereof), and the unsubstantiated and frivolous  
4 allegations in Plaintiffs' Complaint bring this matter squarely under the provisions of A.R.S. §12-  
5 341.01 – this matter partially arises out of contract and the evidence is clear and convincing that this  
6 lawsuit has been a form of harassment, without substantial justification and groundless and not  
7 brought in good faith. Accordingly, the provisions of paragraphs A and C of §12-341.01 and §349  
8 are deemed satisfied for the awarding of attorney's fees. Accordingly,

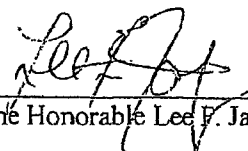
9 IT IS FURTHER ORDERED that MEC or its assignee is awarded attorney's fees in this  
10 matter the sum of \$127,525, to accrue interest at the legal interest rate of <sup>4.25 percent</sup> ~~ten percent (10%)~~ per  
11 annum until paid in full and costs in the amount of \$178.

12 IT IS FURTHER ORDERED denying MEC's Motion for Sanctions for Plaintiffs' Failure to  
13 Answer Interrogatories and Requests to Admit.

14 Based on the rulings above, the Court finds Plaintiffs' Motion for Judicial Determination of all  
15 Counts is moot.

16 DATED June 25, 2012.

17  
18 MOHAVE COUNTY SUPERIOR COURT

19  
20   
21 The Honorable Lee F. Jantzen  
22  
23  
24  
25

# EXHIBIT B

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DUSTIN R. CHANTEL and ELIZABETH	)	No. 1 CA-CV 12-0411
D. CHANTEL, husband and wife,	)	
	)	DEPARTMENT C
Plaintiffs/Appellants,	)	
	)	<b>MEMORANDUM DECISION</b>
v.	)	(Not for Publication -
	)	Rule 28, Arizona Rules of
MOHAVE ELECTRIC COOPERATIVE,	)	Civil Appellate Procedure)
INC., an Arizona non-profit	)	
corporation,	)	
	)	
Defendant/Appellee.	)	

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Appeal from the Superior Court in Mohave County

Cause No. S8015CV200902574

The Honorable Lee Frank Jantzen, Judge

**AFFIRMED**

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Dustin R. Chantel and Elizabeth D. Chantel	Kingman
Plaintiffs/Appellants <i>In Propria Persona</i>	
Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.	Phoenix
By Michael A. Curtis	
Larry K. Udall	
Attorneys for Defendant/Appellee	

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**JOHNSON**, Judge

¶1 Dustin R. and Elizabeth D. Chantel appeal the superior court's entry of summary judgment in favor of Mohave Electric

Cooperative, Inc. ("MEC"). For the following reasons, we affirm.

#### FACTS AND PROCEDURAL BACKGROUND

¶2 MEC is a member-owned and -operated electrical cooperative. The Chantels, who live in Kingman, are members of MEC. The membership application the Chantels signed provided that they would be bound by MEC's articles of incorporation, by-laws and rules and regulations. MEC's rules and regulations provide, *inter alia*: "The Customer will be held responsible for . . . interfering with the Cooperative's meter(s) or other utility property." The rules and regulations also allow MEC to disconnect service without advance notice if there is "an obvious and imminent hazard to the safety or health of the Customer or the general population."

¶3 MEC provided the Chantels with electricity via overhead lines installed on the Chantels' property decades before they purchased it. The lines also served a nearby train signal. In the summer of 2008, without a building permit, the Chantels began building what they called a "divinely inspired" structure directly beneath the lines.

¶4 A county building inspector and an MEC employee visited the property in August 2008 and determined that the clearance between the electric lines and the structure violated the National Electric Safety Code. The county issued stop-work

orders, but the Chantels continued construction. On September 12, 2008, the county instructed MEC to de-energize the overhead lines because the structure created an unsafe condition.

¶5 On September 15, 2008, MEC mailed the Chantels notice of the county's directive that MEC de-energize the lines. The following afternoon, MEC contacted Ms. Chantel to inform her that the lines would be de-energized that day. After de-energizing the lines above the Chantels' structure on September 16, MEC installed a new system to provide service to the nearby train signal. When the Chantels asked MEC to reinstate their service, MEC said it would do so only if the Chantels reimbursed MEC for the costs it incurred in de-energizing the lines and installing the new system.

¶6 The Chantels filed a complaint against MEC alleging that the electrical lines were sagging and the power poles were breaking and asserting that the Chantels built the structure to catch any lines or poles that might break because MEC refused to repair them. They alleged eight claims for relief: Breach of contract, breach of the covenant of good faith and fair dealing, quiet title, ejectment, "recovery of rents," negligence, intentional infliction of emotional distress and punitive damages. MEC filed a counterclaim seeking to recover more than \$41,000 in expenses it incurred in de-energizing the lines and installing the new system.

¶17 MEC moved for summary judgment on the complaint and counterclaim. The Chantels then withdrew their quiet title and ejectment claims, and the court granted MEC's motion for summary judgment as to the Chantels' claims for recovery of rent, intentional infliction of emotional distress and punitive damages, but denied MEC's motion on the other claims.

¶18 At the summary judgment hearing, the Chantels avowed they would produce additional discovery to support their remaining claims. When they produced no such discovery, MEC moved for reconsideration of the denial of its summary judgment motion on its counterclaim and on the Chantels' claims for breach of contract, breach of the covenant of good faith and fair dealing and negligence. The court granted the motion and entered summary judgment in favor of MEC on all of the remaining counts in the complaint and on the counterclaim, stating "[i]n retrospect, the Court's denial of MEC's entire motion was incorrect." The court also awarded MEC more than \$47,000 in damages on its counterclaim and awarded MEC attorney's fees pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-341.01(A) (West 2013) and -349 (West 2013).<sup>1</sup>

¶19 We have jurisdiction of the Chantels' timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution,

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<sup>1</sup> Absent material revisions after the relevant date, we cite a statute's current version.

and A.R.S. §§ 12-120.21(A)(1) (West 2013) and -2101(A)(1) (West 2013).

## DISCUSSION

### A. Legal Principles.

¶10 Summary judgment is appropriate "if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a); *Orme Sch. v. Reeves*, 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990). "Summary judgment is also appropriate when a plaintiff fails to establish a *prima facie* case." *Gorney v. Meaney*, 214 Ariz. 226, 232, ¶ 17, 150 P.3d 799, 805 (App. 2007). We review *de novo* the grant of a motion for summary judgment. *Wolfinger v. Cheche*, 206 Ariz. 504, 506, ¶ 4, 80 P.3d 783, 785 (App. 2003). We review the facts in the light most favorable to the party opposing summary judgment. *Id.* Additionally, an award of attorney's fees is left to the discretion of the superior court and will not be reversed on appeal absent an abuse of discretion. *Orfaly v. Tucson Symphony Soc'y*, 209 Ariz. 260, 265, ¶ 18, 99 P.3d 1030, 1035 (App. 2004).

¶11 In their opening brief, the Chantels challenge only the superior court's entry of summary judgment on their negligence claim and on their claim for recovery of rent and the court's award of attorney's fees in favor of MEC. The Chantels therefore have waived any arguments concerning the court's entry



of summary judgment in favor of MEC on the remaining claims in the complaint and on MEC's counterclaim. See *Phoenix Newspapers, Inc. v. Molera*, 200 Ariz. 457, 462, ¶ 26, 27 P.2d 814, 819 (App. 2001).<sup>2</sup>

**B. Wrongful Termination of Electrical Service.**

¶12 The Chantels argue they are entitled to injunctive relief and money damages for MEC's alleged wrongful termination of their electrical service, claiming it constitutes "actionable tortious conduct." Although MEC argues the Chantels failed to raise this argument in the superior court, we construe the Chantels' argument as a challenge to the summary judgment on their negligence claim, which alleged in part that MEC "wrongfully disconnect[ed] the electricity" to their home.

¶13 A plaintiff must prove four elements to establish a claim for negligence: "(1) a duty requiring the defendant to conform to a certain standard of care; (2) a breach by the defendant of that standard; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual damages." *Gipson v. Kasey*, 214 Ariz. 141, 143, ¶ 9, 150 P.3d 228, 230 (2007).

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<sup>2</sup> We also decline to address the various issues the Chantels raise for the first time in their reply brief, including their request that we issue an injunction requiring MEC to reinstate the Chantels' power service. See *Dawson v. Withycombe*, 216 Ariz. 84, 111, ¶ 91, 163 P.3d 1034, 1061 (App. 2007).

¶14 The Chantels do not identify any legal duty owed by MEC to provide them electrical service. "Whether the defendant owes the plaintiff a duty of care is a threshold issue; absent some duty, an action for negligence cannot be maintained." *Id.* at ¶ 11. The only authority the Chantels cite as imposing a duty upon MEC is Arizona Administrative Code ("A.A.C.") R14-2-208(A)(1), which provides that a "utility shall be responsible for the safe transmission and distribution of electricity until it passes the point of delivery to the customer." That regulation does not impose a duty on MEC to provide service that might give rise to a breach for disconnecting service. Rather, A.A.C. R14-2-208(A)(1) simply requires a utility to safely deliver electricity if it is providing such a service.

¶15 The Chantels cite *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1 (1978), and *Walton Electric Membership Corp. v. Snyder*, 508 S.E.2d 167 (Ga. 1998), for the proposition that a utility may not terminate service for nonpayment without affording a customer due process. We do not consider this argument because the Chantels did not raise it in the superior court. See *Best v. Edwards*, 217 Ariz. 497, 504, ¶ 28, 176 P.3d 695, 702 (App. 2008).

¶16 Moreover, MEC did not disconnect the Chantels' electrical service because of an unpaid bill. MEC offered undisputed evidence in support of its motion for summary

judgment that it disconnected the Chantels' service because the county directed MEC to do so because of safety concerns caused by the structure the Chantels had built directly beneath the electrical lines. See *Tucker v. Hinds County*, 558 So. 2d 869, 875-76 (Miss. 1990) (utility company properly may shut off customer's power when acting pursuant to directive from county official). Additionally, MEC provided the Chantels with more than adequate notice of the pending shut-off. Pursuant to A.A.C. R14-2-211(B)(1)(a), a utility may disconnect service without notice when there is "an obvious hazard to the safety or health of the consumer or the general population," and MEC provided the Chantels both written and personal notice prior to de-energizing the lines.

¶17 We therefore affirm the grant of summary judgment on the Chantels' negligence claim.

**C. Recovery of Rent for MEC's Use and Occupancy of the Chantels' Property.**

¶18 The Chantels also contend they are entitled to rent from MEC pursuant to A.R.S. § 12-1271(A)(2) (West 2013) because they did not grant MEC an easement allowing MEC's electrical lines over their property.

¶19 MEC argues the Chantels' withdrawal of their claims for quiet title and ejectment deprives this court of jurisdiction to address the claim for rent. See *Osuna v. Wal-*

*Mart Stores, Inc.*, 214 Ariz. 286, 289, ¶ 9, 151 P.3d 1267, 1270 (App. 2007) ("Generally, an order granting a voluntary dismissal without prejudice to its being refiled is not an appealable, final judgment." (quotation omitted)). In the "recovery of rents" count of their complaint, however, the Chantels alleged they were entitled under A.R.S. § 12-1271 to the "rents or the fair and reasonable satisfaction for MEC's unauthorized use and possession of the Property."

¶20 In their application for membership to MEC, the Chantels agreed to grant MEC "easements of right of way across [their] property, for construction, use and operation of power lines necessary for the servicing of members in this area." On appeal, the Chantels point to no evidence that would show why this easement grant was not effective. Moreover, the superior court did not abuse its discretion in declining to consider additional arguments the Chantels made for the first time in their motion for reconsideration of the entry of summary judgment against them on this claim.

¶21 Accordingly, we affirm the grant of summary judgment on the Chantels' claim for rent.

**D. Attorney's Fees.**

¶22 Finally, the Chantels contend the superior court erred in awarding MEC its attorney's fees pursuant to A.R.S. § 12-341.01(A) because their claims did not arise out of contract.

In the superior court, however, the Chantels took the contrary position, and in fact described their claims concerning the placement of power lines and their entitlement to service as arising out of their contract with MEC. The Chantels also failed to argue in the superior court that § 12-341.01(A) did not apply to fees incurred in defending any claims in the litigation that did not arise out of contract. Neither did the Chantels object to the reasonableness of the fees MEC sought; they merely argued they "should not be punished for exercising their right to pursue a claim." The failure to challenge the reasonableness of a fee establishes its reasonableness. See *Boltz & Odegaard v. Hohn*, 148 Ariz. 361, 366, 714 P.2d 854, 859 (App. 1985); see also *United States v. Globe Corp.*, 113 Ariz. 44, 51, 546 P.2d 11, 18 (1976) (because the appellant "did not object to the award of costs and attorneys' fees in the court below, the asserted error will not be considered in this Court").<sup>3</sup>

#### CONCLUSION

¶23 We affirm the superior court's grant of summary judgment in favor of MEC on all counts in the Chantels' complaint and on MEC's counterclaim. We grant MEC's request for

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<sup>3</sup> Because we conclude the superior court did not err in awarding fees to MEC as the successful party pursuant to A.R.S. § 12-341.01(A), we need not address the court's alternate ruling imposing fees pursuant to A.R.S. § 12-349.

costs and reasonable attorney's fees on appeal pursuant to  
A.R.S. § 12-341.01(A), upon its compliance with Arizona Rule of  
Civil Appellate Procedure 21.

\_\_\_\_\_/s/\_\_\_\_\_  
DIANE M. JOHNSEN, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
SAMUEL A. THUMMA, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
MICHAEL J. BROWN, Judge